

Analysis of the Senate Amnesty Plan: S2611 Repeats Many of the Mistakes of the Past

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In April of this year the Senate passed the most dramatic changes in US immigration law in the nation's history. Among other things, the bill legalizes an estimated 10 million illegal aliens, allows some 4.5 million of their family members abroad to immediately join them, and it dramatically increases the number of people allowed into the country legally. In this testimony I will point out some of the key problems with the Senate legislation. In many ways the fiscal, labor market, administrative, and other problems S2611 would create closely parallel the problems created by the last amnesty, which was passed in 1986.

Amnesty Mocks the Law Abiding and Encourages more Illegal Immigration

S2611 is Very Much Like the IRCA Amnesty. The Senate plan is very much like the last amnesty passed as part of the Immigration Reform and Control Act (IRCA) passed by Congress in 1986. Any legislation that does not require those who break the law to abide by it, but instead suspends the normal penalty and in some way changes the law to accommodate the violator is an amnesty. An amnesty in the immigration system is any change that allows people who would otherwise be subject to deportation to stay in the country. The idea that S2611 is not amnesty because it does not give permanent residence to illegals immediately is silly. Normally, illegal aliens would be subject to deportation. If 2611 becomes law perhaps 10 million illegal immigrants would be allowed to stay and work in the United States, which is de facto permanent residence and then after a few years would get actual permanent residence and then citizenship.

Some have suggested that the concept of amnesty is based on the idea of forgiveness, and S2611 does not forgive illegals because they will have to pay a fine and meet other requirements. But, the last amnesty for illegals in 1986, which was called an amnesty by everyone at that time, had similar requirements of undergoing a background check, paying a fine, and learning English. Moreover, consider the case of tax amnesties run by the states. Violators pay the taxes they owe plus interest, but the fines are waived. In that context, it's an amnesty because the fines and possible jail time are forgiven. In the Senate plan, illegals are not only being forgiven for being in the country illegally, they are being allowed to stay permanently if they choose. The existence of some penalty does not mean it is not an amnesty. The normal penalty of deportation is being waived. If simply paying a fine and meeting a few other requirements means it's not an amnesty, then IRCA was not an amnesty. In fact, no amnesty — whether for taxes, parking tickets or illegal immigration — exists because all involve some penalty.

Like IRCA, S2611 Mocks the Law Abiding. One of the reasons there is so much resistance to the Senate's amnesty, despite the backing of very powerful interest groups, is that it seems unfair to those who play by the rules. As in 1986, many observers have pointed out that when you reward law breaking, you make legal immigrants who have played by the rules, and in some cases have

waited many years to come to our country, look like fools for taking America's law seriously. This is a terrible message to send, not only to legal immigrants, but anyone thinking about coming illegally. It is also a terrible message to send to those charged with enforcing our immigration law. It is very hard to make a case that the best way to restore the rule of law is to reward those who have broken it with one of the most prized things on earth — permanent residence and eventual US citizenship. Another amnesty will further erode the morale and effectiveness of the immigration bureaucracy and create even more contempt for the rule of law among all parties. Such a policy will very likely make illegal immigration worse not better.

Amnesties and Increased Legal Immigration Don't Solve Problem The 1986 amnesty legalized 2.7 million illegals. Partly as a result of the amnesty and partly because Congress increased legal immigration in 1990, legal immigration has nearly doubled since the mid-1980s. But we have two-and-half-times as many illegals as when IRCA was passed. In effect, we've already tried the key provisions of S2611 — amnesty plus increases in legal immigration. They simply don't work. Amnesty spurs more illegal immigration, as does increases in legal immigration. A 1997 report from the INS found that there was a surge of new illegal immigration when the 1986 amnesty went into effect. The increase seems to have been the result of family members joining their newly legalized relatives. According to the 1997 INS report the number of new illegal immigrants arriving increased by 44 percent between 1987 at the start of the legalizations and 1989 the height of the legalizations.¹

One of the most controversial provisions in S2611 is the very large increase in legal immigration it creates. The larger the pool of immigrants (legal or illegal) in the United States, the greater is the pull for more illegal immigration. Illegal aliens often live with legal immigrants and it is legal immigrants who often provide information about jobs and housing to their relatives and friends back home. Legal immigration has been increasing for more than three decades, and illegal immigration has been increasing right along with it. The top sending countries for legal immigration are by and large the top sending countries for illegal immigration. A survey funded by the National Institute of Health found that one-third of new legal immigrants were former illegal aliens. Legal and illegal immigration are closely linked. The past shows that if you increase one you increase the other. The Senate bill repeats the mistake of thinking amnesty plus increases in legal immigration will solve the problem. It did not in the past and there is no reason to think it will this time around. Instead, S2611 will almost certainly stimulate more illegal immigration.

Like IRCA, S2611 Puts Amnesty First, Enforcement Second. The Senate bill also repeats a key mistake of having the amnesty come before enforcement is actually implemented. In the Senate plan, the amnesty is in no way connected to or contingent upon enforcement. If this approach is allowed, it seems almost certain that like the 1986 amnesty, illegals will get their legal status, but the relatively weak enforcement provisions in the Senate bill will be implemented slowly if at all. The illegals

¹*Annual Estimates of the Unauthorized Immigrant Population Residing in the United States and Components of Change: 1987 to 1997.* Robert Warren, Office of Policy and Planning U.S. Immigration and Naturalization Service.

themselves along with very powerful interest groups will ensure that the amnesty is implemented. But there is no corresponding set of interest groups pushing for enforcement. While enforcement is in the broad national interest, and the public certainly wants it, these are diffuse political forces and have traditionally not been enough to overcome pressure from interest groups who don't want the law enforced, particularly the business community and ethnic advocacy groups. If we do decide to have an amnesty, it should only come after several years of across-the-board enforcement. Otherwise, S2611 will be little more than replay of IRCA, except on a larger scale.

The Scale of S2611 Dwarfs IRCA

The Amnesty Will Be Huge. In a detailed paper published in June, the Center for Immigration Studies estimated the number of people who would benefit from the amnesty provisions of S2611.² Based on the 1986 amnesty, we estimate that slightly over 70 percent (7.4 million) of the 10.2 million illegals eligible for the three amnesties in Hagel-Martinez will come forward and receive amnesty legitimately. That is, they will gain legal status allowing them to live and work in the United States and eventually apply for permanent residence and then citizenship. In addition to the 7.4 million expected to receive amnesty legitimately, we estimate that, as in 1986, there will be one fraudulent amnesty awarded for every three legitimate ones. This means that nearly 2.6 million additional illegals will legalize fraudulently, for a total of 9.9 million. The bill will also allow an estimated 4.5 million spouses and minor children living abroad to immediately join their newly legalized relatives, for a total of 14.4 million people who will benefit from the bill's amnesty provisions. This is an extraordinary level of immigration. Our assumption that the share of illegals who come forward will be similar to the share in 1986 may be too low because, unlike the last legalization, illegals now know that amnesties are real and not a ruse by the government to deport them. Moreover, because the border is now more difficult to cross illegally, legalization is a more attractive option.

Of the 14.4 million illegals and their family members who will receive amnesty, we estimate that 13.5 million will eventually become permanent residents, which means they can stay as long as they wish and apply for citizenship. The rest can be expected to die or return home before becoming permanent residents. The above estimates do not include the bill's very large increases in future legal immigration, which is expected to double or triple from one million a year under current law.

The more than 14 million amnesty beneficiaries is equal to all of the legal immigration that occurred between 1990 and 2005. It is equivalent to the population of 14 states combined. As in 1986, there has been almost no discussion in the Senate bill about these numbers. This is deeply troubling because the impact of immigration on American society is obviously at least partly dependent on the number of people allowed in. But the question of whether the nation can assimilate numbers this large is seldom if ever even asked. The impact on the nation's schools or its physical infrastructure also seems to have not been considered. Congress needs to consider these questions before undertaking a program with such enormous and broad ranging implications for American society.

²The entire report entitled, *Amnesty Under Hagel-Martinez: An Estimate for How Many Will Legalize If S2611 Becomes Law*, can be found at www.cis.org/articles/2006/back606.pdf

S2611 is Administratively Unworkable

Fraud Is Common Now, with Amnesty It Will Mushroom. There is near consensus among those who work for or study the immigration bureaucracy that the system is already overwhelmed with its current workload. As a 2002 GAO report pointed out, “the goal of providing immigration benefits in a timely manner to those who are legally entitled to them may conflict with the goal of preserving the integrity of the legal immigration system.”³ Simply put, the system cannot handle all the applications for green cards, citizenship, asylum, and other forms of immigration “benefits” it currently has to process and still make sure that the law is followed and only those who are entitled the benefits get them. Fraud is still a huge problem at USCIS. A March 2006 GAO report found that the problem of fraud is an “ongoing and serious problem.” A detailed analysis of just one visa category, the one for religious workers, found that one-third of applications were potentially fraudulent.⁴ Given this reality, it is inconceivable that the system could hope to process all the amnesty applications and the large increases in legal immigration without there being fraud on an unprecedented scale.

Fraud Was a Huge Problem in IRCA Too. Because of the enormous problems at USCIS, we estimate that if the agency is asked to implement the S2611, that there will be the same ratio of legitimate to fraudulent legalizations as in 1986. This means we can expect 2.6 million illegal aliens to legalize and be put on a path to permanent residence and citizenship who do not qualify for it. As in 1986, fraud will include those who do not qualify because they entered after the cutoff dates or did not work in agricultural for the required period of time but still used the agricultural amnesty, or those who simply entered the country to get amnesty. It will also include others who may meet the residence requirement for legalization, but otherwise do not qualify because of prior bad acts. All these individuals can be expected to use deception, false documents, false identity, or other forms of fraud. And the overwhelmed bureaucracy can be expected to rubber stamp these applications.

This Time Fraud May Be Even Bigger. Our estimate of 2.6 million fraudulent legalizations may in fact be too low. With a much larger illegal population today than in 1986, the false document industry is much more developed now. Fraudulent applicants can be expected to tap into this trade in order to obtain the fake utility bills, rent receipts, pay stubs, affidavits and other false documents necessary to prove residence or work in agriculture. The very complex and difficult to verify requirements of Hagel-Martinez are also an invitation for fraud. The new amnesty is not only more complex than the 1986 amnesty, it is also much larger with four times as many potential applicants. As the workload mushrooms with amnesty, fraud will become even more difficult to detect and thus a more

³*Immigration and Benefit Fraud: Focused Approach Is Needed to Address Problems*, General Accounting Office January 2002. GAO-02-66. The entire report is available at <http://www.gao.gov/new.items/d02600r.pdf>

⁴*Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud*, Government Accountability Office March 2006. GAO-06-259. The entire report is available at <http://www.gao.gov/new.items/d06259.pdf>

tempting option for those who are not eligible for legalization.

As in the Past National Security Will Be Endangered. The 1986 amnesty clearly facilitated terrorism. Mahmud Abouhalima, a leader of the 1993 Trade Center bombing, was legalized as a seasonal agricultural worker as part IRCA, even though he drove a cab in New York City. His application was approved because the system could little more than rubber stamp most applications, given the enormous workload the 1986 amnesty created. It was only after he was legalized that he was able to travel outside of the country, including several trips to the Afghanistan/Pakistan border, where he received the terrorist training he used in the bombing. Having an illegal alien terrorist in the country is certainly a bad situation, but having one with legal status is much worse because he can work at any job, easily open a bank account, travel to and from the country, receive government issued identification, and otherwise be able to operate in the United States more easily.

It is also worth noting that Mohammed Salameh, another conspirator in the 1993 World Trade Center bombing, applied for the same amnesty as Abouhalima and was denied. But, because then, as now, there is no mechanism in place to force people who are denied permanent residency to leave the country, he continued to live and work in the U.S. illegally and ultimately took part in the 1993 attack. Like IRCA, S2611 almost certainly will not hinder terrorists' activity, in fact it will probably make it easier for terrorist to operate. Given the bureaucratic realities, it is simply not reasonable to expect USCIS to weed out terrorists and criminals.

Amnesty Does Not Solve Labor Market or Fiscal Problems

Amnesty Does Not Solve Problem of Job Competition. If illegals are legalized and are allowed to remain in the country, the poorest and least educated American workers would still face job competition from millions of former illegal aliens. The primary reason illegal immigrants reduce wages or job opportunities for less-educated native-born Americans or legal immigrants already here is not that they work for less, though that certainly happens. The primary reason they create a problem for such Americans is simply their presence in the United States. It is basic economics: increase the supply of something, in this case less-educated workers, and you reduce its price. The price of less-skilled labor is the wages and benefit paid to such workers. Letting illegals stay only makes sense if you think the poor are overpaid. Yet wages have stagnated or declined for such workers, and the share holding a job has deteriorated significantly in recent years. There is some evidence that illegal did do better after being legalized, but there is no evidence that after the last amnesty native-born American with little education saw an increase in their wages and benefit. In fact, the general trends has been for less-educated Americans to do worse in the US labor market. By letting the illegals stay the oversupply of less-educated workers remain, so naturally less-educated natives continue to do poorly in the labor market.

The trend of less educated Americans doing poorly in the labor market has accelerated in recent years. Between 2000 and 2005 the share of natives (18 to 64) with only high school degree holding a job declined from 53 to 48 percent, and the share with only a high school degree and no additional schooling declined from 75 to 70 percent. How does letting in even more less-educated workers through the new H2C program in S2611 help this problem? There are 65 million native-born Americans between the ages of 18 and 64 who have no education beyond high school, 23 million of whom are either unemployed or not even in the labor market, which means they are not even looking for a job. These are precisely the kind of individuals who work in construction, food

service and building cleaning and grounds maintenance occupations, which is where illegal are overwhelmingly concentrated. The vast majority of workers who do this kind of work are natives. Thus to suggest that Americans are not interested in such jobs is ridiculous. Allowing illegals as guest workers, green card holders or illegal aliens means lower wages and job opportunities for less-educated Americans. And as in 1986, unemployment, non-work, and wages of workers at the bottom of the job market show there is no shortage of less-educated workers. If there were, wages and employment should be rising fast, but that simply is not happening.⁵

Amnesty Does Not Solve Costs to Taxpayers. The Senate plan also does not solve one the other big problems associated with illegal immigrants --- the cost to tax payers. Illegal aliens create significant costs for taxpayers mainly because they are unskilled, not because they are illegal. At least 60 percent lack a high school degree and another 20 percent have only a high education with no additional schooling. Such persons pay relatively little in taxes regardless of legal status because they earn so little in the modern American economy. Letting them stay means the costs stay. A Center for Immigration Studies report found that in just the first ten years after IRCA passed, the difference between the taxes the legalized illegals paid and the costs they created was a negative \$79 billion borne by American taxpayers. The National Research Council in 1997 report entitled, *The New Americans*, estimated that the average immigrant without a high school diploma will use \$89,000 more in services than he pays in taxes during his lifetime and an immigrant with only a high school degree will create a net fiscal drain of \$31,000. My research indicates that if we legalized illegals and they began to pay taxes and use services like legal immigrants with the same level of education, the fiscal costs at just the federal level would triple from about \$10 billion a year to nearly \$30 billion.⁶ Unskilled illegal aliens are costly, but unskilled legal immigrants, which is what the illegals would become, cost even more because they can more easily access social programs. If we legalize illegal aliens, the fiscal costs are guaranteed to explode. This is what happened with IRCA and it would surely happen again.

Most Americans Don't Want S2611

S2611 Defies Public Opinion. In a democratic republic, public policy should in general reflect the views of the people. But, S2611 clearly does not do that. Using neutral language a Zogby poll of likely voters conducted for the Center for Immigration Studies found that in general Americans want less not more immigration. Only 26 percent said immigrants were assimilating fine and that immigration should continue at current levels, compared to 67 percent who said immigration should be reduced so we can assimilate those already here.⁷ But the Senate bill does precisely the opposite of what most Americans want. The Senate's plan would increase legal immigration from roughly 1 million

⁵For a detailed discussion of labor market problems of less-educated Americans see *Dropping Out: Immigrant Entry and Native Exit From the Labor Market, 2000-2005* at <http://www.cis.org/articles/2006/back206.pdf>.

⁶See *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* at <http://www.cis.org/articles/2004/fiscal.html>.

⁷To see the result of the Zogby poll from April of this year, including question wording, go to www.cis.org/articles/2006/2006poll.html.

a year to perhaps 2 million or even more. Yet only 2 percent of Americans in the same Zogby poll respond that they believe that current immigration is too low. This is very similar to what happened in the late 1980s with the IRCA amnesty and the large increases in legal immigration passed by Congress in 1990. The public wanted the law enforced and less legal immigration. At the behest of interest groups, Congress responded by legalizing illegal aliens and increasing legal immigration.

While the public may not keep track of the details of immigration policy, Americans generally know we have already tried amnesty and it has not worked. This is one reason the public is so cynical about immigration. Defenders of S2611 often argue that we have tried to enforce the law but we simply can not do it because we are not letting enough people legally. But when asked this very question by Zogby, 71 percent of Americans felt that enforcement had failed because our efforts had been “grossly inadequate,” while only 19 percent felt we had made a “real effort” to enforce our laws and the reason we failed was because we are not letting in enough people legally. Most Americans also don’t buy the argument that we are desperately short of less-skilled workers. When asked, 77 percent said there are plenty of Americans to fill low-wage jobs if employers pay more and treat workers better; just 15 percent said there are not enough Americans for such jobs. Finally, 73 percent of the public said they had little or no confidence in the ability of the government to screen these additional applicants to weed out terrorists and criminals that would result if S2611 became law.

Given deep public opposite to S2611, if it does become law, it can only make the American people more cynical and dissatisfied with our immigration system. Unfortunately, US immigration policy for many years now has been out of step with the desire of most Americans for less legal immigration and greater efforts to enforce immigration laws. The Senate’s plan, like most changes in immigration law in the last four decades, would continue that trend with the same result — growing public anger.

Conclusion

It is often said that history repeats itself. If S2611 become law, that will certainly be true. We would again make the mistake of thinking that amnesty for illegals and increased legal immigration will solve the problem. It didn’t in 1986 and 1990 and it almost certainly will not do so now. Legal immigration has almost doubled since the mid-1980s, but illegal immigration has increased right along with it. In fact, rewarding illegal behavior and increasing legal immigration, as is the past, will only spur more illegal immigration. Like the 1986 amnesty, the immigration service will not be able to handle the crush of work, with the result that there will again be massive fraud. Only this time, because the amnesty is so much larger, fraud will be larger, making it all the more likely that terrorists and criminals will receive amnesty. Moreover, S2611 will not solve the problem of job competition for less-educated or the fiscal burden on taxpayers because illegals will be allowed to stay. Finally, because S2611 is so out of step with public opinion, if it were ever implemented, it would only add to the frustration and dissatisfaction of the American people. Of course, history does not have to repeat itself. Congress can pass sensible legislation that enforces the law and responds to concerns of the American people.